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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,666	01/13/2001	Hiroaki Tsugane	15.29/5629	2708

7590 06/03/2004  
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EXAMINER

SCHILLINGER, LAURA M

ART UNIT PAPER NUMBER

2813

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/759,666

Applicant(s)

TSUGANE ET AL.

Examiner

Laura M Schillinger

Art Unit

2813

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 07 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: noneClaim(s) objected to: noneClaim(s) rejected: 2-4, 6, 8, 16, 19-23Claim(s) withdrawn from consideration: none

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s).

10. ☐ Other: \_\_\_\_\_

*Carl Whitehead, Jr.*  
CARL WHITEHEAD, JR.  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800

Continuation of 5. does NOT place the application in condition for allowance because: Applicant argues that the formation of both functional capacitors in the cell area and pseudo capacitors in the peripheral region does not anticipate his claim language which includes forming a capacitor. This is not persuasive on two grounds 1) it is implicit in the reference that more than one capacitor is formed in the cell array region where the capacitors formed are functional 2) claim language is given its broadest reasonable interpretation and therefore the term "capacitor" used by the Applicant is broad enough to include pseudo capacitors, in either case, layer 16 is patterned to provide a lower electrode for the multiple capacitors in both the cell array and peripheral areas and fully anticipates Applicant's claimed steps. Applicant further argues that claim 3 is not anticipated because Takada fails to teach a first and second resistance element as recited in the claims- Applicant is referred to Col.9, lines: 65-67, teaching a "first resistance element electrode" and a "second resistance element electrode" which fully anticipates Applicant's claim language of a "first resistance element and second resistance element. Applicant is reminded that claim language is given its broadest reasonable interpretation and although the Takada resistance element might not be the same structure referred to in Applicant's specification, limitations from the specification are not read into the claim language. Applicant also argues that the cell plate and second capacitor electrode are not formed simultaneously with the first and second resistance elements - however upon review of Col.9, lines: 60-67 and review of the figures, Applicant should see that all of these are in fact formed simultaneously and the patterning of this layer also further supports the rejection of claim 19.